IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Criminal Revision Application No.241 of 2005

Sou.Rajashree Vijay Salunke & anr. ... Applicants
v/s.
Vijay Dashrath Salunke (Deshmukh). ... Respondent

Mrs.Samata S. Marne for Mr.Sandeep V. Marne for applicants.

Mr.Rahul S. Kate for respondent.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 24th October 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith. Both the Counsel are heard. Mr.Kate waives service for the respondent.

3. Only question in this Criminal Revision Application is as to whether the Family Court at Pune had jurisdiction to entertain and try the Petition under Section 125 of the Code of Criminal Procedure which the 1st applicant had filed before that Court. The learned Judge has taken a view that she did not have jurisdiction on the ground that the applicants were not staying within the local area of Pune city.

4. Mrs.Marne, learned Counsel appearing for the applicants, has pointed out that the 1st applicant and her children i.e. applicant Nos.2 and 3, who are minors, have been staying with her uncle since about December 2002 in Pune which is recorded in para-26 of the judgment. In this behalf, she relies upon a judgment of the Apex Court in the case of **Darshan Kumari (Smt) vs. Surinder Kumar reported in 1995 Supp (4) S.C.C. 137** wherein the Court has held that even temporary residence, if not casual, is sufficient to confer jurisdiction on Magistrate to decide the Application under Section 125 of the Code of Criminal Procedure.

5. Mr.Kate, learned Counsel appearing for the respondent, submits that the 1st applicant was staying outside the jurisdiction and the learned Judge was right in making a distinction between the residence and stay.

6. We have noted the submissions of both the Counsel. The provision under Section 125 of the Code of Criminal Procedure is a welfare provision. It is basically to provide for dependent persons in difficulties. An enabling judgment has been

rendered by the Apex Court. In our view, the learned Judge should not have taken such a hyper-technical view which, on facts, also does not appear to be correct.

7. In the circumstances, we allow this Revision and set aside the order dated 12th May 2005 on Petition E.No.254 of 2003 passed by the Family Court, Pune. That Petition will stand restored to the file of the Family Court and we direct the Family Court, Pune, to hear and decide it on merits. Rule is made absolute as above.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)